



Stadium Casino RE, LLC's Petition to Intervene
in Category 4 Licensing Hearing Regarding
Application of SC Gaming Op Co, LLC

**BEFORE THE PENNSYLVANIA
GAMING CONTROL BOARD**

OHA Docket No. 10577-2022

December 14, 2022

Question Presented

“Stadium therefore seeks to intervene in the Proceedings to *challenge the Board’s statutory authority* to consider SC Gaming’s application.” Stadium Casino Petition, page 1, paragraph 1 (emphasis added).

“The question before the Board is whether [Stadium] should be permitted to intervene in the Pennsylvania Gaming Control Board licensing proceedings [] regarding the Category 4 casino license application of [SC Gaming] in order to *address a fundamental issue of the Board’s statutory power* to even consider SC Gaming’s application under the Gaming Act.” Stadium Casino Br. at p. 1 (emphasis added).

Petitioner's Role Limited by Rule

(4) Petitions to intervene must set out clearly and concisely the facts demonstrating the nature of the alleged right or interest of the petitioner, the grounds of the proposed intervention, the position of the petitioner in the proceeding and a copy of the written statement to be offered under paragraph (6).

(6) *Except when the Board determines that it is necessary to develop a comprehensive evidentiary record, the participation of a person granted the right to intervene in a licensing hearing will be limited to the presentation of evidence through the submission of written statements attested to under oath. The written statements shall be part of the evidentiary record.*

58 Pa. Code § 441(a)(7)(z) (emphasis added)

Stadium Seeks Unprecedented Role

- Board has occasionally allowed testimony “necessary to develop a comprehensive evidentiary record”
 - E.g. External, market information uniquely in the hands of petitioners
 - Such market information not relevant here
- Board has never allowed a petitioner to take discovery to displace or duplicate agency efforts
 - Sugarhouse Casino sought discovery from Stadium Casino, LLC in its 2013 application for a slot machine license
 - Board rejected the request for discovery

Stadium is Not Entitled to Discovery

- Stadium presents legal challenge only: the Board's statutory authority
- While Stadium asserts that SC Gaming is ineligible because it is supposedly not wholly owned by Ira Lubert:
 - It's petition offers no evidence, just conclusory statements.
 - Board not just authorized to decide eligibility, but compelled to:

“At a licensing hearing, an applicant shall appear before the Board and at all times have the burden to establish and demonstrate, by clear and convincing evidence, its eligibility and suitability for licensure.”
58 Pa. Code § 441a.7(d).

Comprehensive Investigation & Report

- OEC and BIE already have power and duty to investigate and make recommendations to the Board on all matters of eligibility and suitability, including the putative concerns raised by Stadium. 4 Pa. C.S. § 1517(a.1), (a.2)
- Applicants have “**continuing duty to provide information** required by the board or the bureau and **to cooperate** in any inquiry or investigation.” 4 Pa. C.S. § 1311(g).
 - Ira Lubert and SC Gaming have fully cooperated with OEC and BIE investigation producing all requested information, including extensive (i) applications; (ii) document submissions; (iii) licensing interviews
 - Failure to cooperate is itself grounds for denial. 4 Pa. C.S. § 1309(b)
- There will be a ***comprehensive investigation report*** provided to the Board including all information about the ownership of SC Gaming the Board requires to determine eligibility.

Conclusion

- No need for hearing or for discovery
- Stadium asserts purely legal question fully presented in papers
- Eligibility is key question that must be decided by Board
- BIE and OEC Investigation Report will address relevant issues
 - And staff have the benefit of Stadium's submission
- No extraordinary basis for unprecedented role by Stadium